

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MCAD and PAULETTE MAILLET,
Complainants

v.

Docket Nos.: 01 SEM 0567

MASSACHUSETTS DEPARTMENT OF
STATE POLICE, MICHAEL DRUMMY,
PAUL CAPPS and DONALD CORMIER,
Respondents

Appearances: Mark F. Murphy and Cynthia Amara, Esqs. for Complainants
Sean W. Farrell and Glenn Rooney, Esqs. for Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On September 5, 2001, Paulette Maillet (“Complainant”) filed a complaint with the Massachusetts Commission Against Discrimination (“MCAD”) charging that she was subjected to discrimination on the basis of gender and retaliation by the Respondent Massachusetts Department of State Police and individually-named Respondents Michael Drummy, Paul Capps and Donald Cormier in violation of G.L. c. 151B, section 4. An amended charge of discrimination was filed on September 23, 2002 alleging additional acts of gender discrimination and retaliation including Complainant’s involuntary retirement from the State Police on May 16, 2002

On September 21, 2011, the Commission dismissed the complaint for Lack of Probable Cause. Complainant appealed the finding and on January 26, 2012, it was reversed and a probable cause finding was issued by the Investigating Commissioner.

The case was certified to public hearing on July 25, 2013. A public hearing was conducted on May 12, 13, and 15, 2014.

The following witnesses testified at the public hearing: Complainant, Michael Drummy, Paul Capps, and Donald Cormier. The parties submitted sixty-eight (68) joint exhibits.

Based on all the relevant, credible evidence and the reasonable inferences drawn therefrom, I make the following findings and conclusions.

II. FINDINGS OF FACT

1. Complainant Paulette Maillet (“Complainant”) was a female trooper employed by the Massachusetts State Police. Her employment extended from October 16, 1992 through May of 2002. Complainant was assigned to the Athol C-1 Barracks on the 3:00 p.m. to 11:30 p.m. shift. She was the only female trooper on her shift and only one of two female troopers assigned to Athol. Transcript III at 581.
2. The Respondent Massachusetts Department of State Police is a paramilitary organization established under G.L. c. 22C, section 1 *et seq.* State troopers are responsible for patrolling highways, buildings, and recreational areas, responding to emergency calls, enforcing laws and ensuring public safety. State Police field operations are divided into Troops A-F and H. Troop C is located in central Massachusetts. It comprises two patrol areas, east and west. Transcript III at 435. Troop C consists of eight barracks including the C-1 Athol Barracks. Three troopers generally work per shift on the desk, east patrol, and west patrol and perform the following tours of duty: 11 p.m. to 7:30 a.m.; 7:00 a.m. to 3:30 p.m. and 3:00 to 11:30 p.m. Transcript II at 234, III at 434.

3. Respondent Donald Cormier was, at all relevant times, a trooper assigned to the C-1 Athol Barracks.¹ He and Complainant worked together from 1995 to 2002. Transcript I at 172, II at 384.
4. On December 25, 1996, Complainant's cruiser was struck by another car. Complainant suffered a back injury which resulted in an initial four-month medical leave from work through April 16, 1997 and ongoing medical problems requiring subsequent medical leaves. Joint Exhibit 66 (Health Resources note of 3/5/01).² Complainant received a wide range of treatments for her injuries, including: Baclofen (muscle relaxant), Vioxx (anti-inflammatory), Amitriptyline (antidepressant), Darvocet (pain killer), Zoloft (anti-depressant), Norflex (muscle relaxant) and Effexor (anti-depressant). Joint Exhibit 66. Complainant returned to full duty on April 16, 1997.
5. Complainant took subsequent medical leaves due to back pain from October of 1997 to December 3, 1997 and from September 6, 1998 to March 16, 1999. Joint Exhibit 66 (Health Resources note of 3/5/01).
6. On July 14, 1999, Complainant's father died. Complainant was very close to him, and his death caused Complainant great stress. Transcript I at 47-48.
7. Respondent Cormier's relationship with Complainant began to deteriorate in 1999. Cormier attributed the deterioration to the death of Complainant's father, but Complainant attributed the deterioration to Trooper Cormier's failure to provide her with back-up assistance. Transcript I at 107, II at 385,404.
8. On the day after the death of Complainant's father, Respondent Michael Drummy was assigned to the C-1 Athol Barracks as Station Commander. Transcript I at 173; III at 433.

¹ Respondent Cormier, as of January of 2012, was promoted to State Police lieutenant. Transcript II at 383.

² Although the Health Resources note is dated "5 March 2001" the content of the notes leads to my conclusion that the date is incorrect and that the correct date is probably March 5, 2002.

He held the rank of Lieutenant. As Station Commander it was his job to oversee the operations of the C-1 Barracks, supervise lower-ranking officers, and assume responsibility for station productivity. Respondent Drummy testified that during the two and one-half years he worked with Complainant at the C-1 Athol Barracks, he interacted with her “quite a bit,” devoted significant time to writing a large number of memos relating to her, and noticed that on a number of occasions Complainant had a “severe shaking syndrome.” Transcript III at 452, 454, 523-524. Lt. Drummy informed the State Police Department of Human Resources that Complainant should be checked by the State Police Surgeon. Id.

9. In or around September of 1999, Complainant again went out on medical leave due to a tremor in both hands. Transcript I at 146; Joint Exhibit 66, Health Resources note of 3/5/01.
 10. After her tremors resolved, Complainant remained out of work due to being diagnosed with a thyroid disorder in January of 2000 and psychiatric issues. Joint Exhibit 66; Transcript I at 148-150.
 11. In January of 2000 while Complainant was on medical leave, Lt. Drummy issued an investigatory report regarding allegations by Complainant that she was denied assistance by fellow officers, including Trooper Cormier, at various times in 1999. Joint Exhibit 61. Lt. Drummy determined that there was no basis for Complainant’s allegation that Trooper Cormier failed to respond for forty minutes to a hit and run call on Route 202 in New Salem while she handled matters by herself, finding instead that Trooper Cormier arrived in fifteen minutes. Lt. Drummy also rejected Complainant’s allegation that Trooper Cormier failed to inform her that Sgt. Connolly had requested assistance at the Westminster turnaround.³
- However, Lt. Drummy did sustain Complainant’s allegation that Trooper Cormier failed to

³ According to Respondent Cormier, he informed Complainant that Sergeant Connolly wanted her to stand by at the Westminster turnaround at Route 2, exit 25, but Complainant mistakenly went to the westbound breakdown lane on Route 2 at exit 27. Transcript II at 401-402.

provide her with assistance when dispatched to assist her at Pearson Blvd. in July of 1999 and that she did not receive assistance from Sgt. Hogan, Trooper Cormier, or Trooper Pacifico in regard to the “Fortunato incident.”⁴ Lt. Drummy determined that Complainant and Respondent Cormier had a personality conflict which needed to be addressed through counseling and monitoring. Joint Exhibit 61.

12. In March of 2000, Complainant was hit by a car in Washington, DC while she was walking. Transcript I at 152. Complainant broke a rib, was rendered unconscious, and sustained a severe cerebral concussion. Transcript I at 153; Joint Exhibit 66 (note of Dr. Roland Caron 3/15/00).
13. While Complainant was out of work, Respondent Paul Capps was assigned to the C-1 Barracks as Sergeant/Shift Supervisor in April of 2000. Transcript II at 233. Respondent Capps served as a Sergeant from 1997 to 2009 after which he was promoted to Lieutenant. Transcript II at 229. He testified that in his role as evening shift supervisor, he interacted with Complainant about two to three times a week. Transcript II at 237.
14. On April 24, 2000, Dr. Brian Morris (the “State Police Surgeon”) received a note from Complainant’s psychiatrist stating that Complainant was free of psychiatric disease and could return to work. Transcript I at 151. Complainant did not tell Dr. Morris about her accident in Washington, D. C. Transcript I at 156.
15. Complainant returned to work on or around May 8, 2000.
16. In October of 2000, Complainant filled out a Health Resources questionnaire in which she was asked about her “past history, hospitalizations and operations.” Transcript I at 154-155. She wrote “none.” Transcript I at 155. The form also asked about “accidents and injuries,

⁴ According to Respondent Cormier, the charges were brought before a Trial Board at which he was found not guilty. Transcript II at 399.

broken bones . . .” Id. Complainant referenced her 1996 work-related accident but not the off-duty pedestrian accident in Washington D.C. in March of 2000. Transcript I at 156.

17. In November of 2000, Complainant, while working, re-injured her back while attempting to arrest a combative patient at Athol Memorial Hospital. Transcript I at 161; Joint Exhibit 66, Health Resources note of 3/5/01. Dr. Morris determined that Complainant exacerbated her 1996 back injury and placed her on injured leave. Transcript I at 56-58; 161-162.

Complainant was also diagnosed with myofascial pain syndrome by Dr. David Janfaza in January of 2001 and treated with Vioxx, Neurontin, and Amitriptyline. Joint Exhibit 66, Health Resources note of 3/5/01. Complainant remained out of work until February 27, 2001. Transcript I at 58.

18. When Complainant returned to duty on February 28, 2001, Sgt. Capps became her direct supervisor. Transcript I at 175. Sgt. Capps’s management style was “thorough” and “almost military like.” Transcript I at 177.

19. During the evening shift of Complainant’s first day back at work on February 28, 2001, a trooper called into the barracks for back-up assistance. Transcript I at 183. Complainant volunteered to respond to the call, but Sgt. Capps told her “everything was all set.” Id. Complainant testified that she went to the scene anyway and arrived before the local officers called by Sgt. Capps. According to Capps, he received a call from Trooper Larry Smith who was out on patrol and requested immediate back-up at a time when Complainant was in the barracks. Transcript II at 308-309. Respondent Capps states that he contacted local police officers to assist Trooper Smith because they were closer to Smith and could get there faster. Transcript II at 309.

20. On-duty troopers are permitted to work out for one hour on the third-floor exercise room at the C-1 Barracks during their shifts, if operationally feasible. Work-out times are determined in accordance with seniority. Transcript I at 165, II at 263, III at 437-439. Complainant testified that on March 19, 2001, Sgt. Capps gave exercise slots to male troopers in preference to her even though the male troopers had less seniority. According to Complainant, when she was finally allowed to exercise that evening, Sgt. Capps shouted up to her prior to the completion of her one-hour exercise slot that she was taking too long, that three other troopers were waiting to exercise, and that he wanted her to cover an accident. Transcript I at 187-190. According to Respondent Capps, Complainant had been exercising for over an hour on March 19, 2001 when he went to the bottom of the stairs on the first floor and yelled up to her to hurry up and get back out on the road. He claims that he did not scream or berate her. Transcript II at 303-304, III at 487. I credit Respondent Capps's version of what transpired on March 19, 2001.

21. Complainant testified that she was denied permission to exercise at home between 2:00 to 3:00 p.m. I do not credit this testimony. Instead, I credit the testimony of Respondents Drummy and Capps that Complainant sought, but was denied, permission to exercise at home during the first hour of her shift, between 3:00 to 4:00 p.m. Transcript I at 191, II 269, III at 485-487 & 570-571. Respondent Drummy explained that there was no problem with Complainant working out at home from 2:00-3:00 p.m. as long as she was on patrol at the start of her 3:00 p.m. shift. Transcript III at 571. Respondents Drummy and Capps testified credibly that they denied Complainant permission to exercise at home between 3:00 and 4:00 p.m. because all on-duty troopers on the evening shift had to be in their assigned patrol areas by 3:00 p.m. and at the C-1 Barracks by 4:00 p.m. at the latest, and preferably sooner, in

order for superior officers to assess their fitness for duty and “divvy up” exercise slots by seniority.⁵ Transcript II at 272 321-323; III at 486, 538-542, 571; Joint Exhibit 5.

22. Complainant asserts that Lt. Drummy instructed Sgt. Capps to pay particular attention to Complainant’s fitness for duty at the beginning of her shift. I credit this assertion but find that he did so based on legitimate concerns about her issues with shaking, alcohol, and prescription medication. Transcript III at 486, 509, 538, 540-542, 572.
23. Troopers are permitted to eat on-duty meals in accordance with their personal preferences, subject to being called out on emergencies. Transcript II at 248-249, III at 439-440. Most troopers choose to eat in the kitchen area of the C-1 Barracks, although some eat on the road. Id. When troopers eat on the road, they must remain inside their assigned patrol area unless they receive permission to leave it. Transcript III at 440. Complainant testified that she was routinely denied permission to eat at her own house in Athol’s west patrol area or at her mother’s house in the Athol’s east patrol area. According to Respondent Drummy, such permission was only denied if Complainant wanted to eat in a different patrol area from where she was assigned. Transcript II at 273-274, III at 481-482. Respondent Drummy testified that on one evening he had difficulty contacting Complainant and the desk officer eventually located her at her mother’s house in the east patrol area even though Complainant was assigned to the west patrol sector and had not notified the Barracks that she was leaving her patrol area. Transcript II at 275-276. I credit Respondent Drummy’s testimony in this regard.
24. On March 28, 2001, Sgt. Capps dispatched Complainant to a disabled motor vehicle at Exits 14 or 15 along Route 2, but she was not able to locate the car because it was closer to

⁵ The desk officer on the evening shift, as opposed to patrol officers, had to be at the barracks by 3:00 p.m. Transcript II at 323.

Orange, MA than to the stated exits. Transcript II at 284-286, III at 474-478. Complainant radioed for additional directions but was told to discontinue her search for the car. Transcript III at 547-549. Another trooper located the disabled motor vehicle. Transcript I at 182. Sgt. Capps prepared a negative “observation” report about the incident on the basis that Complainant did not check the road carefully. Transcript II at 288-289, III at 444-445.⁶ Lt. Drummy advised against issuance of the report based on his conclusion that Complainant had not been negligent but held a verbal counseling session with Complainant and told her that as a senior trooper, she needed to go “the extra yard” in attempting to locate stranded people on the road. Transcript I at 182, III at 478, 548. I credit Respondent Drummy in regard to the March 28, 2001 incident.

25. Complainant testified that Sgt. Capps often referred to her as “Paulette” whereas he addressed other members of the State Police by rank. Transcript I at 108. Respondent Capps testified that he called everyone at the station by their first name except the station commander. Transcript II at 259, 340. I credit Respondent Capps in regard to how he addressed fellow officers.

26. According to Complainant, she discovered on two occasions in late March or early April of 2001 that parts of her uniform were ripped or missing. Respondent Drummy testified that Complainant never mentioned anything about damaged uniforms, only three missing shirts, which were found in the Athol C-1 Barracks laundry. Transcript III at 500. I credit Respondent Drummy in regard to Complainant’s uniforms.

⁶ An observation report addresses trooper behavior considered to be unusually proficient or deficient. A negative observation report is more serious than verbally counseling a trooper. Transcript III at 449. Although Sgt. Capps testified that an observation report is a less serious than counseling a trooper, it appears that he meant to say that an observation report is less serious than a reprimand. Transcript II at 278.

27. On May 6, 2001, Complainant encountered four teenagers pushing a disabled car around a rotary in Gardner, MA. Transcript I at 94. Complainant stopped the vehicle and called a tow truck because the car was causing a hazardous situation. Transcript I at 94-95. According to Complainant, the teenagers and another woman, subsequently identified as the aunt of one of the teenagers, swore and yelled at her. Id.⁷ Some days later, Sharon Amistadi, the mother of two female teenage passengers in the car, complained that Complainant had been rude to the teenagers. Transcript II at 289-290. Sgt. Capps was assigned to investigate the matter on May 11, 2001. He did not complete the investigation until three months later due to training commitments and difficulty contacting some of the witnesses. Transcript II at 369-371. Sgt. Capps issued an investigatory report on August 14, 2001. Joint Exhibit 24. He found that Complainant did not swear at the teenagers or act improperly and that the teenagers swore at Complainant but that Complainant could have been more helpful in assisting the teenagers. Joint Exhibit 24; Transcript II at 294. Lt. Drummy concurred. Transcript III at 491, 567. Lt. Colonel John Cunningham recommended that Complainant be verbally counseled to provide proper assistance to stranded motorists even if they are unruly and to maintain a dignified and professional demeanor. Transcript I at 102-104, III at 493-494, 568; Joint Exhibit 56. Complainant doesn't recall being counseled, but I credit the version of the incident provided by Respondents. Transcript I at 104.

28. On June 5, 2001, Complainant, as desk officer, sent Trooper Cormier to cover an accident. Respondent Cormier testified that after being dispatched, he attempted to inform Complainant over the radio that the accident victim was going to AMH (Athol Memorial Hospital) but that Complainant wouldn't acknowledge receipt of his message and kept asking

⁷ Complainant testified that the woman was Sandra Amistadi but according to the investigatory report, the woman was Debra Shattuck, the aunt of one of the teenagers.

him to repeat it so he arranged for a dispatcher to relay his message to her. Transcript II at 404-412. According to Cormier, after he returned to the station to draft an accident report, Complainant failed to inform him that the accident victim was waiting at the station to talk to him. Respondent Cormier acknowledged that he, “read Trooper Maillet the riot act.”

Transcript I at 105; II at 404-412, 420, III at 497. Complainant denies that she purposely refused to acknowledge receipt of Trooper Cormier’s radio message, states that Cormier intentionally mumbled so that she couldn’t understand him, denies that she failed to tell him that the accident victim was in the lobby waiting for him, and states that he screamed and yelled at her in view of the woman. Transcript I at 106. I generally credit Respondent Cormier’s version of the events over that of Complainant’s.

29. On June 26, 2001, Lt. Drummy sent a memo to Major Stephen Leary stating that he had completed an investigation into Complainant’s charges of “unbearable” working conditions. Joint Exhibit 1. Lt. Drummy noted that Complainant did not get along with Sgt. Capps or Trooper Cormier and was unable to work effectively with them. Lt. Drummy thought they should be separated. Transcript III at 559.

30. Complainant’s annual employee evaluations in 2000 and 2001 were a combination of outstanding and acceptable grades with no grades of “needs improvement” or unacceptable behavior. Transcript II at 282, 329. However, Respondent Drummy estimates that he verbally counseled Complainant at least a dozen times over the two years he worked with her. Transcript III at 512-513.

31. Complainant’s last day of actually working was July 26, 2001. Transcript I at 109, 113. On that day she learned that she was the subject of an investigation by the State Police’s Internal Affairs Unit arising out of an incident which took place approximately eighteen months

earlier, in February of 2000, when she was placed in protective custody by the Westminster Police Department following a car accident. Joint Exhibit 31, p.3. The February, 2000 accident took place after Complainant had been drinking at an American Legion in Ashburnham, MA. Transcript I at 134. Complainant did not report the incident to the State Police. Transcript I at 133, III 462. The incident came to light when Trooper Cormier reported it to Sgt. Capps in the spring or summer of 2001. Transcript II at 306.

32. Complainant went out of work on injured leave for the final time on July 27, 2001. She states that she did so because she had a “very sore” back and she was “very stressed out.” Transcript I at 109-110, 113-114.

33. In August of 2001, the Investigatory Affairs Unit of the State Police commenced an investigation into the circumstances surrounding Complainant’s February, 2000 car accident.

34. Complainant filed an MCAD complaint on September 5, 2001. Transcript I at 114.

35. On September 22, 2001, the Investigatory Affairs Unit interviewed Complainant regarding her February, 2000 car accident. Joint Exhibit 55. Complainant was asked what she was doing immediately before the car accident and she said, untruthfully, that she was in bed sleeping and had not consumed alcohol. Complainant also denied being placed in protective custody after the accident. Id.; Transcript I at 135, 138.

36. In the fall of 2001, while Complainant was on injured leave, she was examined by Dr. Brian Morris, the State Police Surgeon. Transcript I at 114. Complainant did not inform Dr. Morris about her off-duty, pedestrian accident in March of 2000. Transcript I at 156. Dr. Morris said that he was going to recommend that she be involuntarily retired. Transcript I at 116, 158-159. Complainant states that she opposed being involuntarily retired. Transcript I at 116-117.

37. On February 11, 2002, Complainant broke her ankle while trying to push a car out of a snow bank. Transcript I at 160.
38. By letter dated April 1, 2002, Complainant received written notification of the State Police Surgeon's recommendation that she be involuntarily retired. Transcript I at 121. An independent doctor examined Complainant two weeks later and disagreed with the recommendation. Joint Exhibit 12; Transcript I at 122.
39. By letter dated April 2, 2002, Complainant was informed that Respondent's Internal Affairs Unit was recommending that she be suspended without pay for five months as a result of being placed in protective custody by the Westminster Police Department. Joint Exhibit 11; Transcript I at 121. Complainant never served the five-month suspension due to her subsequent retirement. Transcript II at 463.
40. On May 16, 2002, Complainant attended a disability retirement hearing at which she opposed her retirement. Transcript I at 122. She felt that she could continue to function as a state trooper with the right strength training and a less stressful work environment. Transcript I at 123. Despite her opposition, the State Police Rating Board recommended to the State Board of Retirement that Complainant be retired. Joint Exhibit 58; Transcript I at 123. Complainant testified that she felt "lost," "kicked in the gut," and like her "world was taken away." Transcript I at 123. She said that she had "vicious" nightmares for years. Transcript I at 124-125. Complainant testified that she did not socialize as much after her retirement as she did before. Transcript I at 125.
41. Complainant receives a disability pension that is seventy-two per cent of her salary, i.e., \$8,044.93 less than what she had received in salary. Transcript I at 126. Had Complainant

not received an involuntarily disability retirement in 2002, she would have qualified for superannuation retirement in 2014 at seventy-five per cent of her salary. Transcript I at 126.

III. CONCLUSIONS OF LAW

A. Gender Discrimination

In the absence of direct evidence of gender discrimination, a *prima facie* case may be established by showing that Complainant: (1) is a member of a protected class; (2) was performing satisfactorily; (3) suffered an adverse employment action; and (4) was treated differently from similarly-situated, qualified person(s) not in her protected class. See Lipchitz v. Raytheon Company, 434 Mass. 493 (2001); Abramian v. President & Fellows of Harvard College, 432 Mass. 107 (2000) (elements of *prima facie* case vary depending on facts).

Complainant was the only female trooper on her shift at the C-1 Athol Barracks during the events at issue and she reported to all male supervisors. She, thus, satisfies the first element of the *prima facie* case. In regard to the second element, she performed satisfactorily as evidenced by her two average-to-better employee evaluations during the period at issue and the lack of any significant discipline in her personnel record.

Complainant asserts that she suffered numerous adverse employment actions such as Trooper Cormier failing to respond to a hit and run call on Route 202 for forty minutes while she handled matters alone; Trooper Cormier failing to provide her with back-up at Pearson Blvd. in July of 1999; and Sgt. Hogan, Trooper Cormier, and Trooper Pacifico failing to provide her with back-up in regard to the Fortunato incident. Complainant alleges, as well, that Sgt. Capps gave exercise slots to less senior male troopers in preference to her, that she was denied permission to exercise at home between 2:00 to 3:00 p.m. in contrast to a male

trooper, that she was denied permission to eat meals at her own house or at her mother's house even though both houses were within the Athol patrol area, that Sgt. Capps referred to her as "Paulette" whereas he addressed other members of the State Police by rank, that parts of her uniforms were ripped or removed on two occasions, that Sgt. Capps unduly prolonged his investigation into the Amistadi matter, and that Trooper Cormier mumbled inaudibly when speaking to her over the radio about an accident victim going to Athol Memorial Hospital and that he later yelled at her in front of the accident victim. These matters, if proven, are sufficient to constitute adverse employment actions which differentiate her treatment from that accorded to similarly-situated, qualified person(s) not in her protected class, i.e., male troopers.

Having established a prima facie case of discrimination, the burden of production shifts to Respondents to articulate and produce credible evidence to support non-discriminatory reasons for obtaining medical evaluations of Complainant, taking steps to facilitate her retirement, denying her requests pertaining to exercise and meals, and, at times, counseling her for job-related behavior. See Abramian, 432 Mass. 116-117; Wynn & Wynn v. MCAD, 431 Mass. 655, 665 (2000). Respondents successfully met this burden by presenting the following non-gender-based concerns about Complainant's physical condition and about her interactions with colleagues, fellow troopers, and supervisors.

As far as Complainant's physical condition is concerned, the record establishes that after she suffered a back injury in 1996 resulting from a cruiser accident, Complainant consumed pain killers, anti-depressants, anti-inflammatories, and muscle relaxants in order to cope with chronic back pain, she displayed a severe shaking syndrome on a number of occasions and a tremor in both hands, and that she was forced to take five medical leaves of

absence amounting to more than two years and one-half years off the job between 1996 and 2001 due to an array of physical and psychiatric matters. This evidence supports Respondents' position that that there were nondiscriminatory reasons for obtaining medical evaluations of Complainant and for taking steps to facilitate her involuntary disability retirement.

Turning to the allegations that Complainant was denied exercise and meal prerogatives accorded to male troopers, the evidence fails to support the claims that Sgt. Capps gave exercise slots to less senior male troopers in preference to Complainant, that he tried to cut short her one-hour exercise slot on one occasion, and that he denied her permission to exercise at home between 2:00 to 3:00 p.m. The latter charge is unpersuasive because the hour from 2:00 to 3:00 p.m. precedes the start of her shift and, thus, is not subject to control by her supervisors. It is more reasonable, as Respondents assert, that Complainant asked for permission to exercise at home between 3:00 to 4:00 p.m. -- during the first hour of her shift -- and was denied permission for the reason that all troopers on the evening shift were required to be in their assigned patrol areas by 3:00 p.m. and in the C-1 Barracks at the latest by 4:00 p.m., but preferably sooner. Such a requirement was not gender-based but, rather, a legitimate management decision motivated by the need to assess fitness for duty and deal with a variety of personnel matters. Respondents candidly admit that one such personnel matter involved an assessment of Complainant's fitness for duty. While Complainant attributes the assessment to her gender, I conclude that it was due to legitimate, non-gender-based, concerns about Complainant's shaking, tremors, alcohol consumption, and the intake of prescription medication.

Regarding Complainant's accusation that she, unlike male troopers, was denied permission to eat on-duty meals at her own house or her mother's house, the evidence likewise provides a job-related reason for the denial. Complainant was not allowed to eat dinner in those locations unless she was working in the patrol areas in which they were located or unless she received special permission to do so. There is no credible evidence that male troopers, unlike Complainant, were permitted to eat outside their patrol areas absent special permission. Thus, the basis for restricting Complainant's on-duty meals cannot be ascribed to gender.

Complainant also alleges that she was denied collegial support and subjected to unfair treatment in numerous other instances because of her gender but her versions of such matters are not credible. I find unpersuasive Complainant's allegation that Trooper Cormier waited forty minutes before providing her with back-up on Route 202; that Trooper Cormier failed to inform her that Sgt. Connolly had requested assistance at the Westminster turnaround; that Trooper Cormier, without provocation, yelled at her in front of an accident victim; that Complainant, alone among troopers, was addressed by her first name; and that parts of her uniform were ripped or hidden by coworkers. These accusations are not only rebutted by Respondents' witnesses, they are tainted by Complainant's lack of candor in various situations such as failing to report to supervisors her alcohol-related car accident, failing to report her placement into protective custody, and failing to inform the State Police Surgeon that she sustained serious injuries as a result of being hit by a car while off-duty.

More accurate versions of the matters which Complainant attributes to gender discrimination establish that Trooper Cormier came to Complainant's assistance on Route 202 in fifteen, not forty, minutes, that Trooper Cormier correctly deployed Complainant to

the Westminster turnaround, that Trooper Cormier had “words” with Complainant because she failed to give him a telephone message about an investigation he was conducting and failed to let him know that an accident victim was waiting to speak to him, that Sgt. Capps addressed everyone except superior officers by their first names, and that three shirts which Complainant reported to be missing were found in the Athol C-1 Barracks laundry. Based on the foregoing, I conclude Respondents have articulated and produced credible evidence to support nondiscriminatory reasons for obtaining medical evaluations of Complainant, for taking steps to facilitate her retirement, for denying her requests pertaining to exercise and meals, and for counseling her in regard to job-related behavior.

Complainant, at stage three, provides some support for her claim of disparate treatment. For instance, she presents employee evaluations which grade her as average-to-superior in 2000 and 2001. Such assessments stand in stark contrast to the troubled history of Complainant’s employment described by Respondents and contradict the dozen verbal “counsels” that Respondent Drummy estimates he conducted with Complainant between July of 1999 to July of 2001. Also supporting Complainant’s position is the fact that Lt. Drummy sustained Complainant’s allegations that Trooper Cormier failed to provide her with back-up when he was dispatched to assist her at Pearson Blvd. in July of 1999 and that she did not receive back-up or assistance from Sgt. Hogan or Troopers Cormier and Pacifico in regard to the Fortunato incident. This lack of support reinforces Lt. Drummy’s conclusion that Complainant experienced such conflict with Sgt. Capps and Trooper Cormier that she was unable to work effectively with them. Also supporting Complainant’s position that she was unfairly retired is an independent medical report which disagrees with the State Police Surgeon’s recommendation of involuntary disability retirement.

Nonetheless, having weighed all of the foregoing, I conclude that a preponderance of evidence establishes that Respondents' articulated reasons for its actions were not cover-up for a discriminatory motive based on gender. See Knight v. Avon Products, 438 Mass. 413, 420, n. 4 (2003); Lipchitz v. Raytheon Company, 434 Mass. 493, 504 (2001). Complainant's final years as a state trooper were fraught with medical and behavioral concerns that appear to be unrelated to her status as a female state trooper. Her candor was successfully challenged by Respondents in regard to various matters. The independent medical report was neither as complete nor as convincing as Dr. Morris's medical evaluation recommending involuntary disability retirement. Accordingly, her charge of gender based discrimination must be dismissed.

B. Retaliation

Chapter 151B, sec. 4 (4) prohibits retaliation against persons who have opposed practices forbidden under Chapter 151B or who have filed a complaint of discrimination. Retaliation is a separate claim from discrimination, "motivated, at least in part, by a distinct intent to punish or to rid a workplace of someone who complains of unlawful practices." Kelley v. Plymouth County Sheriff's Department, 22 MDLR 208, 215 (2000) quoting Ruffino v. State Street Bank and Trust Co., 908 F. Supp. 1019, 1040 (D. Mass. 1995). Since Complainant does not proffer direct evidence of a retaliatory motive, Complainant must demonstrate that: (1) she engaged in a protected activity; (2) Respondents were aware that she had engaged in protected activity; (3) Respondents subjected her to an adverse employment action; and (4) a causal connection exists between the protected activity and the adverse employment action. See Mole v. University of Massachusetts, 58 Mass. App. Ct. 29, 41 (2003); Kelley v. Plymouth County Sheriff's Department, 22 MDLR 208, 215 (2000). While

proximity in time is a factor in establishing a causal connection, it is not sufficient on its own to make out a causal link. See MacCormack v. Boston Edison Co., 423 Mass. 652 n.11 (1996), *citing* Prader v. Leading Edge Prods., Inc., 39 Mass. App. Ct. 616, 617 (1996).

Complainant engaged in protected activity by filing an MCAD complaint September 15, 2001. Eight months later, in May of 2002, she was involuntarily retired by the State Police based on her back condition. While these two occurrences satisfy the first three elements of a prima facie case of retaliation, they fail to establish a causal connection for the reasons set forth below.

Complainant left work in July of 2001 on injured leave status due to a sore back and work-related stress. She never returned to duty after that departure. Dr. Morris examined Complainant in the fall of 2001 after she had been out of work for several months and determined that Complainant was not fit to return to duty. Even if Complainant discussed her MCAD complaint with Dr. Morris, I am unpersuaded that such information would have impacted his medical diagnosis.

Complainant argues that she could have functioned as a state trooper in 2002 and beyond with the right strength training and in a less stressful situation than the one at Athol, but the fact remains that at that time, she had already been off the job for months due to a sore back and stress. During the preceding five years she had missed more than two and one-half years of work due to a variety of physical and emotional ailments. There is no reason to believe that Complainant would have been more successful working as a trooper beginning in 2002 than she had been previously. Dr. Morris, who previously cleared Complainant to work, concluded in 2002 that she should be involuntarily retired. The Police Rating Board, whose decision is

based on Dr. Morris's recommendation, made a reasonable and impartial medical decision that was not causally-connected to Complainant's protected activity.

IV. ORDER

The case is hereby dismissed. This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal of this decision with the Clerk of the Commission within ten (10) days after the receipt of this Order and a Petition for Review within thirty (30) days of receipt of this Order.

So ordered this 19th day of February, 2015.

Betty E. Waxman, Esq.,
Hearing Officer